

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

DELORES GRIFFIN,

Plaintiff-Appellant,

v

CITY OF PONTIAC,

Defendant-Appellee.

---

UNPUBLISHED

October 26, 2006

No. 269988

Oakland Circuit Court

LC No. 2005-066253-NO

Before: Cavanagh, P.J., Bandstra and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant city on plaintiff's claim for damages. Plaintiff alleged that she tripped and fell on a sidewalk that defendant did not properly maintain. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The 68-year-old plaintiff claimed that she tripped when her right foot caught on a broken sidewalk in the city of Pontiac, and she then fell on the sidewalk, suffering a fractured right patella. Plaintiff sued defendant under MCL 600.1401 *et seq* for negligence in the construction, inspection, and maintenance of the sidewalk on which she tripped and fell. Defendant answered the complaint and moved for summary disposition under MCR 2.116(C)(7) (governmental immunity), (8) (failure to state a claim), and (10) (no genuine issue of material fact). During plaintiff's deposition, she circled on photographs the location where she fell. The photographs showed voids and defects in the surface of the sidewalk that were greater than two inches in area, but the photographs revealed no height differentials within the sidewalk that were two inches or greater.

The circuit court granted summary disposition under MCR 2.116(C)(10) in favor of defendant, noting that, as a governmental agency, defendant was immune from tort liability under MCL 691.1401 *et seq.*, unless a specific exception to governmental immunity applied. Defendant's duty to maintain a highway in reasonable repair, so that it was reasonably safe for travel, extended to the sidewalk. However, MCL 691.1402a provided that a discontinuity defect in the sidewalk of less than two inches created a rebuttable presumption that the city maintained the sidewalk in reasonable repair. In this case, the photographs demonstrated that the height

discontinuity in the sidewalk was less than two inches, and plaintiff had failed to present other evidence that would rebut the presumption that the city maintained the sidewalk in reasonable repair.

Plaintiff argues on appeal that the photographs rebut the presumption of reasonable maintenance and create a genuine issue of material fact as to whether the sidewalk was in reasonable repair for public travel. We disagree.

This court reviews de novo the grant or a denial of a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999); *Spiek v Dept of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A governmental agency is immune from tort liability when it engages in a governmental function unless an exceptions applies. MCL 691.1407(1). The highway exception to governmental immunity requires a governmental agency to maintain “a highway under its jurisdiction in reasonable repair so that it is reasonably safe and convenient for public travel.” MCL 691.1402(1). The definition of “highway” includes sidewalks. MCL 691.1401(e). Under MCL 691.1402a(2), the “two-inch rule,” a “discontinuity defect of less than 2 inches creates a rebuttable inference that the municipal corporation maintained the sidewalk . . . in reasonable repair.”

In this case, the photographs submitted by plaintiff show height discontinuities of less than two inches. Therefore, under the two-inch rule, as the circuit court correctly noted, the presumption arises that defendant maintained the sidewalk in reasonable repair. However, the pictures also show the sidewalk in disrepair with defects and voids in the surface of the sidewalk. Nevertheless, plaintiff has not explained how the surface defects and voids revealed in the photographs show that the sidewalk is not reasonably safe and convenient for public travel. The defects are open and obvious and do not present any readily apparent obstacle precluding any pedestrian passage over the sidewalk. Therefore, even though the sidewalk is in disrepair, its disrepair is not sufficient to rebut the presumption that it is in a condition that is reasonably safe for travel.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Richard A. Bandstra  
/s/ Donald S. Owens